Supreme Court, U.S.
FILED
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Nos. 87-712 and 87-929

In the Supreme Court of the United States

OCTOBER TERM, 1987

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., PETITIONERS

v.

COMMONWEALTH OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS, CROSS-PETITIONER

v.

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI (No. 87-712) FILED OCTOBER 30, 1987
CROSS-PETITION FOR A WRIT OF CERTIORARI (No. 87-929) FILED DECEMBER 2, 1987
CERTIORARI GRANTED JANUARY 11, 1988

In the Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-712

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., PETITIONERS

v.

COMMONWEALTH OF MASSACHUSETTS

No. 87-929

COMMONWEALTH OF MASSACHUSETTS, CROSS-PETITIONER

v.

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOINT APPENDIX

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The following opinions, decisions, judgments, orders, and complaints have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed petition for a writ of certiorari in No. 87-712:

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Complaint dated 8/26/83 ..... 95a
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Complaint dated 6/5/85 ..... 89a
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Court of Appeals' Order Denying Rehearing dated 6/2/87 ..... 87a

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 86-1109

COMMONWEALTH OF MASSACHUSETTS, PLAINTIFF-APPELLEE

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,
DEFENDANT, APPELLANT

DOCKET ENTRIES

DATE	FILINGS – PROCEEDINGS	Filed
1986		
Feb. 14	Record on appeal in one volume, received and filed. Case docketed. Notices mailed.	(ms)
Feb. 21	Appearance of George Eng, Esq., for appellant received and filed.	(kn)
Feb. 24	Appellant's statement of issues, received and filed.	(lw)
Feb. 24	Appearance of William Kanter, Esq. and Howard S. Scher, Esq. for appellant received and filed.	(lw)
Feb. 25	Motion filed. Order (Breyer, J.) consolidating these cases. Further, enlarging time for appellant in 86-1109 to file its brief and the appendix to its brief to and including March 26, 1986. Notice mailed.	(lb)

DATE	FILINGS – PROCEEDINGS	Filed
Feb. 26	Appellant's Docketing Statement, received and filed.	(lw)
Feb. 27	Appearance of Thomas A. Barnico, Esq., for appellee, received and filed.	(lw)
Feb. 28	Appearance of Jason W. Mann, Esq., for appellant, received and filed.	(lw)
March 12	Appellant's "Motion For Extension Of Time Within Which To File Opening Brief", received and filed.	(al)
	Appellant's "Motion To Defer Filing Of Joint Appendix", received and filed.	(al)
	ORDER: (Torruella, J) granting parties leave to proceed upon deferred appendix upon following conditions: The prosecution is not to be delayed due to using deferred appendix. The deferred appendix is due 14 days after service of the brief for appellee. Appellant's initial brief is due April 16, 1986 and appellee's initial brief is due within 21 days after service of appellant's initial brief, and both briefs are due to be filed in final form within 10 days of the filing of the deferred appendix. Notices mailed.	(al)
April 18	Motions filed. Order: (Campbell, Ch.J.) granting leave for appellant to file its initial brief instanter; and further, granting leave for appellant to file a 53 page brief. Notices mailed.	(sb)
	Brief for the appellants, received and filed. Notices mailed.	(sb)

DATE	FILINGS – PROCEEDINGS	Filed
May 2	Motion filed. Order: (Bownes, J.) enlarging the time for appellee to file its brief to and including May 20, 1986. Notices mailed.	(sb)
May 16	Motion filed. Order (Bownes, J.) enlarging the time for appellee to file its initial brief to and including May 28, 1986. Notices mailed.	(lr)
May 20	Brief for Commonwealth of Pennsylvania amicus curiae, received and filed.	(al)
May 30	Motions filed. Order: (Bownes, J.) granting leave for appellee to file a fifty-eight page brief instanter. Notices mailed.	(sb)
	Brief for appellee, Commonwealth of Massachusetts, received and filed.	(sb)
June 6	Letter Motion of amicus curiae, Comm. of Pennsylvania, to argue, received and filed.	(al)
June 11	Motion filed. ORDER (Coffin, J.) enlarging the time for filing the reply brief for appellant and the deferred joint appendix to and including June 26, 1986. Notices mailed.	(al)
June 19	ORDER (Campbell, Ch. J., Coffin, and Bownes, JJ) Treating the Commonwealth of Pennsylvania's June 3, 1986 letter as a motion for oral argument, the motion is denied. Notices mailed.	(al)
June 27	Reply brief of the appellants received and filed.	(lb)

DATE	FILINGS–PROCEEDINGS Filed
June 30	Brief for appellant in final form and deferred joint appendix in volumes I, II and III, received and filed by leave of court. (al)
July 9	Brief for plaintiff-appellee in final form, received and filed. (ms)
Sept. 29	Assigned for hearing at the October, 1986 session. (sb)
Oct. 8	Heard before Coffin, Breyer and Torruella, JJ. (sb)
Oct. 21	Motion For Leave To File Post-Argument Memorandum, received and filed. (ms).
1987	
March 31	ORDER (Coffin, Breyer and Torruella, JJ) Upon consideration of appellant's motion to file a Post-Argument Memorandum, said motion is granted. Notices mailed. (al)
March 31	Secretary of Health and Human Service's Post Argument Memorandum, received and filed. (al)
March 31	JUDGMENT: The judgment of the district court is affirmed in part, vacated in part and the cause is remanded to the district court for further action consistent with the opinion filed this day. Each party to bear its own costs. Opinion of the Court by, Torruella, J. Notices mailed. (al)

DATE	FILINGS–PROCEEDINGS Filed
April 10	Motion filed. ORDER: (Torruella, J.) enlarging the time for the Secretary of Health and Human Services to file a petition for rehearing or petition for rehearing with suggestion for rehearing en banc to and including May 14, 1987. Notices mailed. (ljr)
May 14	Petition For Rehearing With Suggestion For Rehearing En Banc of appellant, received and filed. (lr)
June 2	ORDER (Campbell, Ch. J., Coffin, Bownes, Breyer, Torruella and Selya, JJ.) denying the petition for rehearing and the suggestion for a rehearing en banc. Notices mailed. (al)
June 10	Mandate issued. Copy filed. Original papers returned to the district court. Notices mailed. (pm)
Dec. 17	Notice of Certiorari to Supreme Court. (cd)
	Notice of certiorari to the Supreme Court (December 2, 1987) SC# 87-929. (al)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 86-1118

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC WELFARE,
PLAINTIFF-APPELLEE

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,
DEFENDANT, APPELLANT

DOCKET ENTRIES

DATE	FILINGS – PROCEEDINGS	Filed
1986		
Feb. 19	Record on Appeal in One Volume, received and filed. Case docketed and notices mailed.	(lw)
Feb. 21	Appearance of George Eng., Esq., for appellant received and filed.	(kn)
Feb. 25	Motion filed. Order (Breyer, J.) consolidating these cases. Further, enlarging time for appellant in 86-1109 to file its brief and the appendix to its brief to and including March 26, 1986. Notices mailed.	(lb)
	Appellant's docketing statement received and filed.	(lb)

DATE	FILINGS – PROCEEDINGS	Filed
Feb. 27	Statement of issues received and filed.	(ms)
Feb. 27	Appearance of Howard S. Scher & William Kanter for appellant. received and filed.	(ms)
Feb. 27	Appearance of Thomas A. Barnico for appellant. received and filed.	(ms)
March 12	Appellant's "Motion For Extension Of Time Within Which To File Opening Brief", received and filed.	(al)
	Appellant's "Motion To Defer Filing Of Joint Appendix", received and filed.	(al)
	ORDER: (Torruella, J) granting parties leave to proceed upon deferred appendix upon following conditions: The prosecution is not to be delayed due to using deferred appendix. The deferred appendix is due 14 days after service of the brief for appellee. Appellant's initial brief is due April 16, 1986 and appellee's initial brief is due within 21 days after service of appellant's initial brief, and both briefs are due to be filed in final form within 10 days of the filing of the deferred appendix. Notices mailed.	(al)
April 18	Motions filed. Order: (Campbell, Ch.J.) granting leave for appellant to file its initial brief instanter; and further, granting leave for appellant to file a 53 page brief. Notices mailed.	(sb)
	Brief for the appellants, received and filed. Notices mailed.	(sb)

DATE	FILINGS–PROCEEDINGS Filed
May 2	Motion filed. Order: (Bownes, J.) enlarging the time for appellee to file its brief to and including May 20, 1986. Notices mailed. (sb)
May 16	Motion filed. Order (Bownes, J.) enlarging the time for appellee to file its initial brief to and including May 28, 1986. Notices mailed. (lr)
May 20	Brief for Commonwealth of Pennsylvania amicus curiae, received and filed. (al)
May 30	Motions filed. Order: (Bownes, J.) granting leave for appellee to file a fifty-eight page brief instanter. Notices mailed. (sb)
	Brief for appellee, Commonwealth of Massachusetts, received and filed. (sb)
June 6	Letter Motion of amicus curiae, Comm. of Pennsylvania, to argue, received and filed. (al)
June 11	Motion filed. ORDER (Coffin, J.) enlarging the time for filing the reply brief for appellant and the deferred joint appendix to and including June 26, 1986. Notices mailed. (al)
June 19	ORDER (Campbell, Ch. J., Coffin, and Bownes, JJ) Treating the Commonwealth of Pennsylvania's June 3, 1986 letter as a motion for oral argument, the motion is denied. Notices mailed. (al)
June 27	Reply brief of the appellants received and filed. (lb)

DATE	FILINGS–PROCEEDINGS Filed
June 30	Brief for appellant in final form and deferred joint appendix in volumes I, II and III, received and filed by leave of court. (al)
July 9	Brief for plaintiff-appellee in final form, received and filed. (ms)
Sept. 29	Assigned for hearing at the October, 1986 session. (sb)
Oct. 8	Heard before Coffin, Breyer and Torruella, JJ. (sb)
Oct. 21	Motion For Leave To File Post-Argument Memorandum, received and filed. (ms).
March 31	ORDER (Coffin, Breyer and Torruella, JJ.) Upon consideration of appellant's motion to file a Post-Argument Memorandum, said motion is granted. Notices mailed. (al)
March 31	Secretary of Health and Human Service's Post Argument Memorandum, received and filed. (al)
March 31	JUDGMENT: The judgment of the district court is affirmed in part, vacated in part and the cause is remanded to the district court for further action consistent with the opinion filed this day. Each party to bear its own costs. Opinion of the Court by, Torruella, J. Notices mailed. (al)
April 10	Motion filed. ORDER: (Torruella, J.) enlarging the time for the Secretary of Health and Human Services to file a petition for rehearing or petition for re-

DATE	FILINGS–PROCEEDINGS Filed
	hearing with suggestion for rehearing en banc to and including May 14, 1987. Notices mailed. (ljr)
May 14	Petition For Rehearing With Suggestion For Rehearing En Banc of appellant, received and filed. (lr)
June 2	ORDER (Campbell, Ch. J., Coffin, Bownes, Breyer, Torruella and Selya, JJ.) denying the petition for rehearing and the suggestion for a rehearing en banc. Notices mailed. (al)
June 10	Mandate issued. Copy filed. Original papers returned to the district court. Notices mailed. (pm)
Dec. 17	Notice of certiorari to Supreme Court, received and filed. (cd)
1988	
Jan. 13	Notice of certiorari to the Supreme Court (December 2, 1987) SC# 87-929. (al)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 83-2523-G

COMMONWEALTH OF MASSACHUSETTS, PLAINTIFF,

v.

MARGARET HECKLER, ET AL., DEFENDANTS.

DOCKET ENTRIES

DATE	NR	PROCEEDINGS
Aug. 26	1	Complaint, FILED. Summons ISSUED.
Oct. 28	2	ANSWER of the Deft, FILED. (w/admin. Record) (c/s)
	3	Certification of Video Tape Exhibit, FILED.
Nov. 8		*GARRITY, J.* PROCEDURAL ORDER ENTERED: Court will treat 2nd and 3rd Defense of Def't as constructive motions to dismiss. Deft to file by 12/05/83 memo of law in support of constructive motions. P to reply by 12/19/83, FILED. (cc/cl)
Dec. 6	4	Motion for Extension of Time for Defts to file Motions for S/J w/Memo to 12/30/83, FILED. (c/s)

DATE	NR	PROCEEDINGS
Dec. 29		*GARRITY, J.* re: #4 . . . ALLOWED (cb), FILED. (cc/cl)
Dec. 30	5	Defts' Memorandum Concerning Subject Matter Jurisdiction, FILED. (c/s)
1984		
Jan. 9	6	P's Memorandum Asserting District Court Jurisdiction to Review The Decision of the Grant Appeals Board, FILED (c/s)
Jan. 11	6A	*GARRITY, J.* ORDER ENTERED: In light of parties' memoranda, both defenses are ORDERED DENIED. In our opinion, we do have subject matter jurisdiction. Denial of the third defense is without prejudice to latter motions for summary judgment, FILED. (cc/cl)
May 18	7	Motion (Commonwealth of Pennsylvania) for leave to participate amicus curiae and leave for attorney's to appear and practice pro hac vice, filed with c/s.
Aug. 8		*GARRITY, J.* re: #7 . . . Motion DENIED– see Strasser v. Dooby, 1 Cir. 1970, 432 F.2d 567, 569, FILED. (cc/cl)
Nov. 1	8	P's Motion for Summary Judgment, FILED. (c/s)
	9	P's Memorandum in Support of Its Motion for Summary Judgment, FILED. (c/s)

DATE	NR	PROCEEDINGS
Nov. 23	10	Assented to Motion for Extension of Time to respond to P's Motion for S/J to 12/14/84, FILED.
Dec. 21	11	Motion for Ext. of Time to respond to P's Motion for S/J to 01/04/85, FILED. (assented to)
1985		
Jan 2	12	Assented to Motion for Extension of Time for Defts to respond to P's Motion for S/J to 01/25/85, FILED.
Jan 21	13	Assented to Motion for Extension of Time to 01/25/85 to respond to P's Motion for S/J, FILED.
Jan 25	14	Defts' Motion for S/J, FILED. (c/s)
	15	Memorandum in Support of Deft's Motion for S/J and in Oppos. to P's Motion for S/J, FILED. (c/s)
Feb. 7		*GARRITY, J.* re: #14 . . . NOTICE OF HEARING: Hear cross-motion for S/J on 03/04/85 at 3:00 p.m., FILED. (cc/cl)
Feb. 28	16	P's Motion to Continue Hearing (sched. for 03/04/85) FILED. (assented)
March 1		*GARRITY, J.* re: #16 . . . GRANTED–hearing continued to 03/18/85 at 2:30 p.m. FILED. (cc/cl)
March 18		*GARRITY, J.*–After hearing, cross-motions for S/J, TUA.

DATE	NR	PROCEEDINGS
May 21	17	Ltr. to J. Garrity from Thomas A. Barnico, Asst. Atty. Gen, re pending motion for S/J, FILED. (c/s)
June 3	18	Ltr. to J. Garrity from Ausa Green, FILED. (c/s)
Aug. 27	18A	*GARRITY, J.* MEMORANDUM AND ORDERS ON CROSS MOTIONS FOR SUMMARY JUDGMENT ENTERED: Commonwealth's Motion for S/J is Granted and Deft's Cross-Motion for Summary Judgment is Denied; counsel to stipulate and file a form of judgment as soon as practicable, FILED. (cc/cl, Full Pub.)
Oct. 7	18B	*GARRITY, J.* JUDGMENT ENTERED: Decision of HHS is REVERSED, FILED. (cc/cl)
Dec. 5	19	Deft's NOTICE OF APPEAL, FILED. (c/s)
Dec. 30	20	P's Opposition to Motion for Reconsideration, FILED. (c/s) (AUSA DID not file a Motion for Recon. in this case, but did in 85-2337-G)
1986		
Feb. 6		Certified copy of docket & original pleadings forward to court of appeals.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 85-2337-G

COMMONWEALTH OF MASSACHUSETTS, PLAINTIFF,

v.

MARGARET HECKLER, ET AL., DEFENDANTS.

DOCKET ENTRIES

DATE	NR	PROCEEDINGS
June 5	1	Complaint, FILED. Summons ISSUED. (CFI)
July 9	2	ANSWER of Deft (w/Amin. Record), FILED. (c/s)
Aug. 28	2a	*GARRITY, J.* PROCEDURAL ORDER ENTERED: Court entered its memorandum and orders on cross-motions for S/J in the case CA No. 83-2523-G on 08/27/85 (attached). Defts in this case shall by 09/16/85 file any opposition to that memo and Order, w/memorandum; and if no opposition parties shall stipulate an appropriate form of judgment, FILED. (cc/cl)
Sept. 13	3	Motion for Extension of Time to 09/30/85 to respond to Procedural Order FILED. (plaintiff has assented)

DATE	NR	PROCEEDINGS
	4	Notice of Appearance of Andrew S. Hogeland as counsel for Defts, FILED. (c/s)
Sept. 30	5	Deft's Response to Procedural Order of August 28, 1985, FILED. (c/s)
Oct. 2		*GARRITY, J.* re: #5 . . . the procedure suggested herein is adopted; except that one week periods shall be enlarged to two weeks. According cross motions shall be filed on or before 10/16/85, FILED. (cc/cl)
Sept. 3	6	P's Reply to "Defts' Response to Procedural Order of 08/28/85," FILED. (c/s)
Sept. 17	7	Defts' Motion for S/J and Opposition to P's Motion for S/J, FILED. (c/s)
Sept. 18	8	P's Motion for Summary Judgment, FILED. (c/s)
Nov. 25	8a	*GARRITY, J.* MEMORANDUM AND ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT ENTERED, FILED. (cc/cl), Full Publication)
Dec. 2	8B	JUDGMENT ENTERED: Summary Judgment for Plaintiff, FILED. (cc/cl)
Dec. 12	9	Motion for Reconsideration, FILED. (c/s)

DATE	NR	PROCEEDINGS
Sept. 20	10	P's Opposition to Motion for Reconsideration, FILED. (c/s)
1986		
Jan. 24		*GARRITY, J.* RE: #9 . . . Upon consideration of this motion and P's opposition, motion is Ordered DENIED without hearing oral argument, FILED. (cc/cl)
Feb. 5	11	NOTICE OF APPEAL, FILED. (c/s)
Feb. 7		Certified copy of docket entries and original pleadings forwarded to the Court of Appeals.

DEPARTMENT OF HEALTH AND
HUMAN SERVICES

CERTIFIED MAIL – RETURN RECEIPT
REQUESTED

Joseph P. Roman, Esquire
Legal Division, Room 611
Massachusetts Department of
Public Welfare
600 Washington Street
Boston, Massachusetts 02111

JUN 30, 1983

and

George Eng
Assistant Regional Attorney, Region I
John F. Kennedy Federal Building, Room 2407
Government Center
Boston, Massachusetts 02203

RE: Decision in the Appeal of Massachusetts
Department of Pubic Welfare
Docket No. 82-169
Decision No. [illegible]56
Dated: May 31, 1983

Dear Mr. Roman and Mr. Eng:

Enclosed is a copy of the decision of the Departmental Grant Appeals Board in the appeal identified above. The decision constitutes the final administrative action on this matter.

Sincerely yours

/s/ Neil H. Kaufman
Executive Secretary
Departmental Grant Appeals Board

Enclosure

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION No. 83-2523-G

COMMONWEALTH OF MASSACHUSETTS, PLAINTIFF

v.

MARGARET HECKLER, ET AL. DEFENDANTS.

DEFENDANTS' MEMORANDUM CONCERNING SUBJECT MATTER JURISDICTION

INTRODUCTION

On August 30, 1983, the Commonwealth of Massachusetts filed an action seeking judicial review of a final decision of the Grant Appeals Board of the Department of Health and Human Services (HHS) which sustained the Health Care Financing Administration's (HCFA) disallowance of $6,414,964 in federal financial participation under the Medical Assistance Program (Medicaid) of the Social Security Act, 42 U.S.C.A. § 1396 *et seq.* (West Supp. 1982).

On October 28, 1983, defendants answered the complaint and asserted as an affirmative defense that this court lacks subject matter jurisdiction to review plaintiff's claims.*

* The answer raised two other affirmative defenses. First, defendants asserted that the Commonwealth failed to serve the complaint properly on the U.S. Attorney's office under Fed. R. Civ. P. 4. The defendants waive this defense because they did in fact receive the complaint, although improperly served. Second, the answer states that the complaint fails to state a claim upon which relief can be granted. The government prefers to deal with this defense in a later filed motion for summary judgment based on the administrative record.

As a matter of policy, HHS has decided not to press the defense of lack of jurisdiction in this action. However, because the First Circuit has recently stated that the jurisdiction of this Court is uncertain, defendants submit this memorandum to assist the Court in evaluating this question.

DISCUSSION

Title XIX of the Social Security Act, 42 U.S.C.A. § 1396 *et seq.* (West Supp. 1982), does not provide for judicial review of the Secretary's determination to disallow federal financial participation. Section 1316(d) provides:

> (d) Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under subchapter I, VI, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

The full text of Section 1316 is attached hereto. Indeed Section 1316 expressly provides for judicial review in the Court of Appeals for actions challenging the Secretary's determination that a state Medicaid plan does not *conform* with federal requirements but is distinctly silent on judicial review of *disallowances.*

In *Commonwealth of Massachusetts v. Departmental Grant Appeals Board of the United States Department of Health and Human Services,* 698 F.2d 22, 26 (1st Cir. 1983), the First Circuit stated that it was "uncertain" whether the Federal District Courts had jurisdiction to review a disallowance determination of the Secretary who has refused to participate in an unauthorized expenditure. *Id.* There, as here, the Secretary did not contest jurisdiction. However, the First Circuit stated: "Of course, the agreement of the parties will not confer jurisdiction if Congress has not done so [citation omitted] and we do not now decide whether it has." *Id.*

Various Federal Courts of Appeal have examined whether the federal district courts have subject matter jurisdiction to review disallowance determinations. The Ninth and Seventh Circuits have held such determinations judicially reviewable. *Illinois v. Schweiker,* 707 F.2d 273, 275-277 (7th Cir. 1983); *County of Alameda* v. *Weinberger,* 520 F.2d 344, 347-349 (9th Cir. 1975). The Eighth Circuit has held that the District Court has jurisdiction to grant prospective declaratory relief but that the Claims Court has exclusive jurisdiction under 28 U.S.C.A. § 1491 (West Supp. 1981) to review monetary claims in excess of $10,000 against the United States and its agencies. *State of Minnesota v. Heckler,* 718 F.2d 852, 857-858 (8th Cir. 1983). Here, although plaintiff seems to request prospective equitable relief, the action challenging a retroactive disallowance can be construed as one for monetary claims in excess of $10,000.

Finally, the Fifth Circuit has indicated, in dictum, that "the statutory history of section 1316(d) . . . indicates that the section's sponsors recommended against judicial review of disallowances." *State Department of Public Welfare v. Califano,* 556 F.2d 326, 329 n.4, 332 (5th Cir. 1977), *cert. denied,* 439 U.S. 818 (1978). It cites the following remarks of Senator Javits:

> Some States and local officials believe that some form of judicial review should encompass all respects of the public assistance programs, including matching issues or audit exceptions. However, the much greater concern is for review of decisions regarding plan-conformity issues. The Commission believes that to

involve audit exceptions or issues other than those of plan conformity in the judicial review process would create many additional problems.

Id. at 332. The Supreme Court has never decided the jurisdictional question.

CONCLUSION

This action raises two significant questions of subject matter jurisdiction. First, does this Court have jurisdiction under Section 1316 to review disallowance determination? Second, does this Court or the Claims Court have jurisdiction over plaintiff's claims, which can be construed as monetary claims over $10,000?

Respectfully submitted,

WILLIAM F. WELD
United States Attorney

By: /s/ Patti B. Saris
PATTIS B. SARIS
Assistant U.S. Attorney

DATE: December 29, 1983

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CIVIL ACTION No. 83-2523-G

COMMONWEALTH OF MASSACHUSETTS, BY ITS DEPARTMENT OF PUBLIC WELFARE, PLAINTIFF

v.

MARGARET HECKLER, AS SHE IS SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,

CAROLYN DAVIS, AS SHE IS ADMINISTRATOR OF THE HEALTH CARE FINANCING ADMINISTRATION OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,

AND

NORVAL D. SETTLE, CECELIA SPARKS FORD, AND DONALD F. GARRETT, AS THEY CONSTITUTE THE DEPARTMENTAL GRANT APPEALS BOARD OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DEFENDANTS

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, the plaintiff Commonwealth of Massachusett (the "Commonwealth") moves the Court to grant summary judgment in its favor and reverse the decision of the Department Grant Appeals Board of the Department of Health and Human Services.

As grounds for its motion the Commonwealth states that there is no dispute as to material facts and it is entitled to judgment as a matter of law. As further grounds for its

motion the Commonwealth relies on the arguments set forth in the memorandum filed herewith.

Pursuant to U.S. Dist. Ct. Local R. 12(c), the Commonwealth respectfully requests that the Court allow it twenty minutes for oral argument on its motion, at the Court's convenience.

By its attorneys,

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

/s/ Thomas A. Barnico

THOMAS A. BARNICO
Assistant Attorney General
Department of the Attorney General
Government Bureau
One Ashburton Place, room 2019
Boston, Massachusetts 02108
617-727-1004

Date: November 13, 1984

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION No. 84-2523-G

COMMONWEALTH OF MASSACHUSETTS, BY ITS DEPARTMENT OF PUBLIC WELFARE, PLAINTIFF

v.

MARGARET HECKLER, AS SHE IS SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,

CAROLYN DAVIS, AS SHE IS ADMINISTRATOR OF THE HEALTH CARE FINANCING ADMINISTRATION OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,

AND

NORVAL D. SETTLE, ALEXANDER G. TEITZ, AND DONALD F. GARRETT, AS THEY CONSTITUTE THE DEPARTMENTAL GRANT APPEALS BOARD OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DEFENDANTS

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, the defendants hereby move the Court to grant summary judgment in their favor and enter an Order affirming the decision of the Department Grant Appeals Board of the Department of Health and Human Services in this action.

As grounds for their motion, defendants state that there is no dispute as to the material facts and they are entitled to judgment as a matter of law. As further grounds for their motion, defendants rely on the grounds stated in their Memorandum in Support of Defendants' Motion for

Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment, incorporated herein and filed herewith.

Respectfully submitted,

WILLIAM F. WELD
United States Attorney

By: /s/ Karen F. Green

KAREN F. GREEN
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DATED: January 25, 1985

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION No. 85-2337-G

COMMONWEALTH OF MASSACHUSETTS, PLAINTIFF

v.

MARGARET HECKLER, ET AL. DEFENDANTS.

ANSWER

Defendants, Margaret Heckler, Carolyne Davis, Norval D. Settle, Judith Ballard, and Donald Garrett, hereby respond to the numbered paragraphs of plaintiff's Complaint as follows:

First Defense

1. Paragraph 1 contains plaintiff's characterization of this action and conclusions of law to which no response is required. To the extent a response is required, defendants deny that the $4,908,994 in federal financial participation referred to by plaintiff was due to it under the Medical Assistance Program (Medicaid) of the Social Security Act, 42 U.S.C. §§ 1396 *et seq*. Defendants also deny that any federal reimbursement has been wrongfully withheld.

2. Paragraph 2 contains conclusions of law to which no response is required.

3. Defendants admit the allegations contained in paragraphs 3 through 14 of the Complaint, but further state that the Administrative Record, filed herewith, speaks for itself.

4. Defendants deny the allegations contained in paragraphs 15(A) through (E) and 16.

Second Defense

Defendants' findings of facts are supported by substantial evidence in the administrative record, filed herewith, and are conclusive. Defendants' promulgation and interpretation of regulations are within the statutory framework and are proper.

Third Defense

Judgment should be entered for defendants dismissing the Complaint with prejudice and costs and the Secretary's decision should be affirmed.

Respectfully submitted,

WILLIAM F. WELD
United States Attorney

By: /s/ Karen F. Green
KAREN F. GREEN
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617/223-0466

DATED: July 9, 1985

Supreme Court of the United States

No. 87-712

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., PETITIONERS

v.

MASSACHUSETTS

ORDER ALLOWING CERTIORARI. Filed January 11, 1988.

The petition herein for a writ of certiorari to the *United States Court of Appeals for the First Circuit* is granted. This case is consolidated with 87-929, *Massachusetts* v. *Otis R. Bowen, Secretary of Health and Human Services, et al.*, and a total of one hour is allotted for oral argument.

Supreme Court of the United States

No. 87-929

MASSACHUSETTS, PETITIONER

v.

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

ORDER ALLOWING CERTIORARI. Filed January 11, 1988.

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